

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No.: 3:23-cv-00259-CSD

JAMES EDWARD SCOTT, III,

Plaintiff

v.

MIKE W. HENLEY, et al.,

Defendants

Order

Re: ECF No. 39

Before the court is Defendants' motion for summary judgment. (ECF No. 39.) Plaintiff has not filed a response.

For the reasons set forth below, Defendants' motion is granted.

I. BACKGROUND

When Plaintiff filed this pro se civil rights action pursuant to 42 U.S.C. § 1983, he was an inmate in the custody of the Nevada Department of Corrections (NDOC). He was subsequently released from prison. The events giving rise to this action took place while Plaintiff was housed at Northern Nevada Correctional Center (NNCC).

The court screened Plaintiff's amended complaint and allowed him to proceed with a claim for lack of procedural due process related to his placement in administrative segregation under the Fourteenth Amendment.

Defendants move for summary judgment, arguing Plaintiff failed to exhaust administrative remedies prior to filing this lawsuit, and they are entitled to qualified immunity because there was no constitutional violation.

II. LEGAL STANDARD

The legal standard governing this motion is well settled: a party is entitled to summary judgment when “the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Cartrett*, 477 U.S. 317, 330 (1986) (citing Fed. R. Civ. P. 56(c)). An issue is “genuine” if the evidence would permit a reasonable jury to return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). A fact is “material” if it could affect the outcome of the case. *Id.* at 248 (disputes over facts that might affect the outcome will preclude summary judgment, but factual disputes which are irrelevant or unnecessary are not considered). On the other hand, where reasonable minds could differ on the material facts at issue, summary judgment is not appropriate. *Anderson*, 477 U.S. at 250.

“The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court.” *Northwest Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994) (citation omitted); *see also Celotex*, 477 U.S. at 323-24 (purpose of summary judgment is “to isolate and dispose of factually unsupported claims”); *Anderson*, 477 U.S. at 252 (purpose of summary judgment is to determine whether a case “is so one-sided that one party must prevail as a matter of law”). In considering a motion for summary judgment, all reasonable inferences are drawn in the light most favorable to the non-moving party. *In re Slatkin*, 525 F.3d 805, 810 (9th Cir. 2008) (citation omitted); *Kaiser Cement Corp. v. Fischbach & Moore Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986). That being said, “if the evidence of the nonmoving party “is not significantly probative, summary judgment may be granted.” *Anderson*, 477 U.S. at 249-250 (citations omitted). The court's function is not to weigh the evidence and

1 determine the truth or to make credibility determinations. *Celotex*, 477 U.S. at 249, 255;
2 *Anderson*, 477 U.S. at 249.

3 In deciding a motion for summary judgment, the court applies a burden-shifting analysis.
4 “When the party moving for summary judgment would bear the burden of proof at trial, ‘it must
5 come forward with evidence which would entitle it to a directed verdict if the evidence went
6 uncontroverted at trial.’ ... In such a case, the moving party has the initial burden of establishing
7 the absence of a genuine [dispute] of fact on each issue material to its case.” *C.A.R. Transp.*
8 *Brokerage Co. v. Darden Rest., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (internal citations
9 omitted). In contrast, when the nonmoving party bears the burden of proving the claim or
10 defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate
11 an essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving
12 party cannot establish an element essential to that party’s case on which that party will have the
13 burden of proof at trial. *See Celotex Corp. v. Cartrett*, 477 U.S. 317, 323-25 (1986).

14 If the moving party satisfies its initial burden, the burden shifts to the opposing party to
15 establish that a genuine dispute exists as to a material fact. *See Matsushita Elec. Indus. Co. v.*
16 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party need not establish a genuine
17 dispute of material fact conclusively in its favor. It is sufficient that “the claimed factual dispute
18 be shown to require a jury or judge to resolve the parties’ differing versions of truth at trial.”
19 *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987)
20 (quotation marks and citation omitted). The nonmoving party cannot avoid summary judgment
21 by relying solely on conclusory allegations that are unsupported by factual data. *Matsushita*, 475
22 U.S. at 587. Instead, the opposition must go beyond the assertions and allegations of the
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1 pleadings and set forth specific facts by producing competent evidence that shows a genuine
2 dispute of material fact for trial. *Celotex*, 477 U.S. at 324.

3 III. DISCUSSION

4 The Prison Litigation Reform Act (PLRA) provides that “[n]o action shall be brought
5 with respect to prison conditions under section 1983 of this title, or any other Federal law, by a
6 prisoner confined in any jail, prison, or other correctional facility until such administrative
7 remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). An inmate must exhaust his
8 administrative remedies irrespective of the forms of relief sought and offered through
9 administrative avenues. *Booth v. Churner*, 532 U.S. 731, 741 (2001).

10 The failure to exhaust administrative remedies is “an affirmative defense the defendant
11 must plead and prove.” *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (quoting *Jones v.*
12 *Bock*, 549 U.S. 199, 204, 216 (2007)). Unless the failure to exhaust is clear from the face of the
13 complaint, the defense must be raised in a motion for summary judgment. *See id.* (overruling in
14 part *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003) which stated that failure to exhaust
15 should be raised in an “unenumerated Rule 12(b) motion”).

16 “If undisputed evidence viewed in the light most favorable to the prisoner shows a failure
17 to exhaust, a defendant is entitled to summary judgment under Rule 56.” *Id.* at 1168. Once a
18 defendant shows that the plaintiff did not exhaust available administrative remedies, the burden
19 shifts to the plaintiff “to come forward with evidence showing that there is something in his
20 particular case that made the existing and generally available administrative remedies effectively
21 unavailable to him.” *Id.* at 1172 (citing *Hilao v. Estate of Marcos*, 103 F.3d 767, 778 n. 5 (9th
22 Cir. 1996)); *Draper v. Rosario*, 836 F.3d 1072, 1080 (9th Cir. 2016) (inmate plaintiff did not
23 meet his burden when he failed to identify any actions prison staff took that impeded his ability

1 to exhaust his administrative remedies, or otherwise explain why he failed to comply with the
2 administrative remedies process)). The ultimate burden of proof, however, remains with the
3 defendant. *Id.*

4 Exhaustion cannot be satisfied by filing an untimely or otherwise procedurally infirm
5 grievance, but rather, the PLRA requires “proper exhaustion.” *Woodford v. Ngo*, 548 U.S. 81, 89
6 (2006). “Proper exhaustion” refers to “using all steps the agency holds out, and doing so
7 properly (so that the agency addresses the issues on the merits).” *Id.* (emphasis in original)
8 (quoting *Pozo v. McCaughtry*, 286 F.3d 1022, 1024 (7th Cir. 2002)). Thus, “[s]ection 1997e(a)
9 requires an inmate not only to pursue every available step of the prison grievance process but
10 also to adhere to the ‘critical procedural rules’ of that process.” *Reyes v. Smith*, 810 F.3d 654,
11 657 (9th Cir. 2016) (quoting *Woodford*, 548 U.S. at 90). “[I]t is the prison’s requirements, and
12 not the PLRA, that define the boundaries of proper exhaustion.” *Jones v. Bock*, 549 U.S. 199,
13 218 (2007).

14 Inmates within NDOC must utilize the grievance process set forth in Administrative
15 Regulation (AR) 740 to exhaust administrative remedies. (See ECF No. 39-6.) AR 740 requires
16 an inmate to pursue a grievance through three levels: informal, first and second levels. (*Id.*)

17 A review of Plaintiff’s grievance history, attached as Exhibit E to Defendants’ motion for
18 summary judgment, demonstrates that he did not complete a grievance through the second level
19 complaining about the lack of due process related to his placement in administrative segregation.
20 (ECF No. 39-5.)

21 Plaintiff did not oppose the motion for summary judgment to argue that he did exhaust
22 administrative remedies for this claim or that administrative remedies were unavailable.
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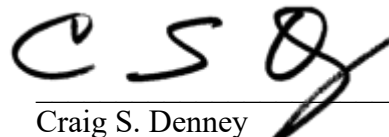
1 Therefore, the court finds Plaintiff failed to properly exhaust administrative remedies
2 prior to filing his civil rights action pursuant to 42 U.S.C. § 1983.

3 **IV. CONCLUSION**

4 Plaintiff failed to exhaust administrative remedies prior to filing this this civil rights
5 action pursuant to 42 U.S.C. § 1983. Therefore, Defendants' motion for summary judgment
6 (ECF No. 39.) is **GRANTED** and **JUDGMENT** should be entered in Defendants' favor.

7 **IT IS SO ORDERED.**

8 Dated: July 23, 2025

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10 Craig S. Denney
11 United States Magistrate Judge
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